

Conversely, respondent and its insurance carrier request the Board to affirm the Order denying benefits. Respondent and its insurance carrier contend that claimant is not credible and, in fact, staged the fall down the stairs.

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.
2. This claim hinges upon claimant's credibility. The Judge implicitly determined that claimant's testimony was not credible when considering the entire record, including, among other adverse evidence, claimant's admission that he has been convicted for theft and a coworker's testimony that shortly before the alleged accident claimant asked that coworker to witness claimant's fall. The Board affirms the Judge's finding that claimant has failed to prove that he sustained a compensable, work-related accident while working for respondent.
3. Claimant requests the Board to overturn the Judge's evidentiary ruling to permit claimant to question Mr. Alt about Mr. Alt's being suspended from work. Because the evidentiary ruling in question is not a final order, the Board does not have jurisdiction to address that ruling in this preliminary hearing order appeal.¹
4. As provided by the Workers Compensation Act, preliminary hearing findings are not final but, instead, subject to being modified upon a full hearing on the claim.²

WHEREFORE, the Board affirms the February 22, 2001 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of May 2001.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Kirby A. Vernon, Wichita, KS
John D. Clark, Administrative Law Judge

¹ See K.S.A. 44-534a and K.S.A. 44-551.

² K.S.A. 44-534a(a)(2).

BOBBY BLAND

3

DOCKET NO. 261,045

Philip S. Harness, Director